



Quick Reference Guide:

Ticketing and Administrative Hearing Process

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Department of Fire Services Commonwealth of Massachusetts

Ticketing and Administrative Hearing Process

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I. INTRODUCTION

This Quick Reference Guide is intended to provide fire departments with an overview of the requirements and process to be followed when violations of the fire code have been identified and the fire department wishes to issue a written notice of code violation ("Ticket") and/or refer the case to the Department of Fire Services ("DFS") for further administrative action.

II. BACKGROUND AND AUTHORITY

As part of the Comprehensive Fire Safety Act of 2004, the legislature enacted M.G.L. c. 148A, entitled *Code Enforcement Officer*. Chapter 148A authorizes any local or state code enforcement officer, empowered to enforce violations of the state building code or the state fire code to the give an offender a written notice of a code violation as an alternative to initiating criminal proceedings. For a local code enforcement officer to issue a ticket, the city or town must have appointed a trained and designated hearing officer to hear appeals.

III. NON-CRIMINAL TICKETING AND APPEAL PROCESS

Generally, a ticket will be issued in one of two situations. The first is a ticket issued for a violation that pertains to the hazards of fire and explosion created by the storage, handling or use of substances, materials or devices, or from conditions, or materials hazardous to life, property and the public welfare as prescribed in M.G.L. Chapters 22D and 148. (i.e. blocked exit, improper storage of flammable materials, failure to have required permit, etc.) The second is a ticket issued to a person or entity who is licensed, or required to be licensed, to conduct a regulated activity for violations of the regulated activity. (i.e. improper hood cleaning, conducting activities without possessing a valid certificate of competency, advertising for services without possessing a valid certificate of registration, etc.). Regardless of the reason for the ticket, the following conditions apply.

A. Requirement for Designated Hearing Officer ("DHO")

In order to participate in the citation process, cities/towns must appoint a certified DHO. Citations written by local code enforcement officers, which are appealed, are heard before the DHO. The DHO is appointed by his or her municipality to conduct such hearings. In order to serve as a DHO, an individual must receive training provided jointly by the Office of the Attorney General and the Massachusetts Municipal Lawyers Association. The training is offered periodically by the Massachusetts Fire Academy for those communities who did not initially participate or who have a need to appoint a new or additional hearings officer.

If the municipality does not have a DHO and cannot issue tickets, the municipality should contact their assigned DFS Compliance Officer for assistance.



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B. Who May Issue a ticket?

A ticket may be issued by the head of the fire department, as defined in M.G.L. c. 148, s. 1, or a designee of the head of the fire department who is empowered to enforce the state fire code pursuant to M.G.L. c. 148, s. 4.

C. What Violations Can a Ticket be Issued For?

A ticket may be issued for a violation of any section of the Fire Code. Formerly, fire departments relied on the "Red Book" to provide them with a list of "approved violations." However, this list was meant to be a reference to the most commonly cited sections and was not all encompassing. To eliminate any confusion, DFS will no longer provide copies of the Red Book.

D. Ticket Form

Tickets must be issued on the standard Massachusetts Non-Criminal Fire Code Violation Notice form. A copy of the standard ticket is included in Appendix A. "Ticket books" may be ordered, at cost, by contacting:

Lane Printing & Advertising
210. S. Franklin Street Holbrook, MA 02343
www.laneprint.com
(781) 767-4450

E. Notice

Every ticket must contain sufficient notice, including the name and address, if known, of the offender, the specific offense charged, and the date, time, and place of the violation. Because this information is the minimum required to satisfy due process, DFS recommends that whenever a ticket is issued, a corresponding inspection report be generated as well. The inspection report should include greater detail on the observed violations, including statements, photos and/or video, if applicable, so that in the event further proceedings occur, the code compliance officer will be better prepared to present its case.

F. Fines, Penalties, Assessments, Warnings

1. Written Warning – The code compliance officer may issue a written warning in lieu of an assessment



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2. Assessment - If the notice is for 1 or more code violations, the code enforcement officer shall indicate on the notice the scheduled assessment for each violation alleged. If the notice of violation is for a continuing condition, the code enforcement officer shall indicate that the condition must be corrected within 24 hours of receipt of such notice. Failure to correct the condition within 24 hours may serve as grounds for criminal prosecution pursuant to section 34C of chapter 148.

3. Approved Assessments.

For purposes of determining the assessment amount, each violation constitutes a first offense, even if multiple violations are indicated on the ticket. For second, third, or greater offenses to apply, the offender must have been previously ticketed for the same offense.

- | | |
|----------------------------|------------|
| • First Offense | \$100.00 |
| • Second Offense | \$500.00 |
| • Third Offense or Greater | \$1,000.00 |

G. Delivery of Ticket

1. The ticket shall be signed by the code enforcement officer and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The local code enforcement officer shall, if possible, deliver to the offender a copy of the notice at the time and place of the violation.
2. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, the copy shall be mailed or delivered by the code enforcement officer, or by the head of his department, or by any person authorized by such department head, to the offender's last known address, within 15 days after the violation or discovery thereof. Such notice as so mailed shall be deemed a sufficient notice so long as the person mailing the notice completes the Officer Certification section on the ticket.
3. The notice shall be executed in triplicate. For tickets issued relating to the licensing of a DFS regulated activity, one copy should be sent to DFS Licensing for inclusion in the offender's DFS licensing file.



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H. Compliance with Ticket

1. If the ticket is for 1 or more code violations, the alleged violator shall return the ticket by mail, personally or by authorized person to the municipal hearing officer, or for a state issued ticket, to the DFS, and shall, within 21 days, either: (1) pay in full the scheduled assessment; or (2) request a hearing. Any amounts paid shall be payable to the city, town, or the state as the case may be.
2. For a municipally issued ticket, the appeal will occur before the municipal DHO. For state issued tickets, the appeal will occur before a clerk magistrate of the housing court within the county in which the alleged violation occurred, by submitting the notice by mail, personally or by authorized person to the housing court.
3. Any person who has properly received a ticket and either fails to pay the scheduled assessment or fails to exercise his right to request a hearing within the prescribed time, or who fails to appear at the time and place of the hearing, shall be deemed responsible for the code violations in any civil proceeding regarding said violation and shall be admissible as evidence in a subsequent criminal proceeding.
4. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be in any proceeding to suspend or revoke any license, permit or certificate issued by such municipality, the state fire marshal or commissioner of the division of occupational licensure relative to said building, structure or premises pending the correction of the condition.

I. Appeal Hearings

1. Municipally Issued Ticket Appeal Hearings
 - The municipal hearing officer shall schedule a hearing not later than 45 days after receiving such hearing request.
 - The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing.
 - In no case shall the hearing officer, so designated, be an employee or officer of the fire department or building department associated with the code enforcement officer who issued the notice of violation.
 - The hearing by the municipal hearing officer shall be informal and the formal rules of evidence shall not apply.



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- Any person aggrieved by a decision of the municipal hearing officer, after a hearing, may appeal to the housing court within the county in which the violation occurred and shall be entitled to a hearing before a clerk magistrate of the court.
- The appeal shall be filed by the aggrieved person within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.
- Any person aggrieved by a decision of the clerk magistrate, after a hearing, may appeal to a single justice of the housing court and shall be entitled to a hearing before a single justice of the court.
- The aggrieved person shall file such appeal within 10 days after receiving notice of the decision from the clerk magistrate who conducted the hearing. The decision of the single justice shall be final.

2. State Issued Ticket Appeal Hearings

- The clerk magistrate shall schedule a hearing not later than 45 days after receiving such hearing request.
- The clerk magistrate shall duly notify the alleged violator and the state code enforcement officer of the date, time and location of the hearing.
- The code enforcement officer who issued the notice of violation may appear personally at said hearing or may designate another person from his department or district to prosecute the case who is also empowered to enforce such building or fire code, as the case may be.
- Such hearing by the clerk magistrate shall be informal and the formal rules of evidence shall not apply.
- Any person aggrieved by a decision of the clerk magistrate, after a hearing, may appeal to a single justice of the housing court and shall be entitled to a hearing before a single justice of the court.
- The aggrieved person shall file such appeal within 10 days after receiving notice of the decision from the clerk magistrate who conducted the hearing. The decision of the single justice shall be final.

IV. ADMINISTRATIVE ACTION BY DFS

Particularly for tickets issued for a violation of code pertaining to the licensing of an individual or entity pursuant to 527 CMR 1.13, sanctions beyond a ticket may be warranted. On such occasions, the matter may be referred to the DFS Office of the General Counsel ("DFS Legal") for further review. DFS Legal will consider the information provided and determine whether the need for further administrative action is justified. If so, DFS Legal will schedule a hearing with



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the alleged violator and the code compliance officer. Potential outcomes include no sanction, probation, suspension, and/or revocation.

A. Criteria for Referral to DFS Legal

Not every issuance of a ticket should result in a referral to DFS Legal. In comparing the ticket and the administrative action process to speeding, offenders are often given a warning, then a fine, then a hearing. The code compliance officer should use his/her training and experience to make a reasonable and rational determination as to whether the issuance of a warning or fine alone will serve to correct the alleged violator's behavior and deter future similar conduct. However, there are situations when further administrative action is necessary. Some examples include, but are not limited to, repetitive bad behavior by an individual or company, performance of an activity that creates a substantial risk of harm to life or property, and blatant disregard for licensing requirements

B. Procedure for Referral to DFS Legal

1. For a municipal code compliance officer, a copy of the ticket, report, and any other supporting documentation is submitted to a DFS code compliance officer for review.
2. The DFS code compliance officer will consult with the municipal code compliance officer and make an initial determination whether to refer the case to DFS Legal.

C. DFS Legal Review

1. Upon receipt of the case file, DFS Legal will evaluate the merits of the case by considering the totality of the circumstances, the offense, and the offender. In making its determinations, DFS Legal may request additional information from the code compliance officers.
2. Once DFS Legal has reviewed the case, it will either decline to take further action or it will move forward with an administrative hearing. If the matter is declined, DFS Legal will provide a letter to the code compliance officer explaining its reasoning.

D. DFS Administrative Hearing

1. All hearings are conducted pursuant to the State Administrative Procedures Act, M.G.L. c. 30A, and the Adjudicatory Rules of Practice and Procedure, 801 CMR 1.02 and 1.03.



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2. The case will be prosecuted by a member of DFS Legal and the Hearing Officer shall be appointed by the State Fire Marshal.
3. Both the municipal and state code compliance officers may be called to testify as witnesses.
4. The alleged violator has the right to participate in the hearing, have an attorney present, present evidence, and examine and cross examine witnesses.
5. Upon conclusion of the hearing, the Hearing Officer has 30 days to render a decision.

E. DFS Informal Resolutions

DFS Legal is authorized to enter into consent agreements to informally resolve administrative matters without the need to conduct a hearing. These agreements are binding on the violator and result in a resolution which furthers the goals of punishment and deterrence in a manner that is most advantageous to the parties. Prior to entering into discussions with the alleged violator, DFS Legal will make all reasonable attempts to discuss the case with the code compliance officers beforehand.

V. CRIMINAL SANCTIONS

Although the process is difficult to navigate, criminal sanctions are available under the following scenarios. For instances where the imposition of criminal sanctions is to be considered, a municipality should contact their corporate counsel or police department.

- A. **M.G.L. c.148, s.10B:** Violation of regulations of board
Any person who knowingly violates any rule or regulation made by the board of fire prevention regulations shall, except as otherwise provided, be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.
- B. **M.G.L. c. 148, s. 30:** Violations; notice and enforcement of orders or regulations
Violation of any lawful rule, order or regulation of the board or of any lawful order of the marshal or lawful rule or order of the head of a fire department, punishment whereof is not otherwise provided for, shall be punished by a fine of not more than fifty dollars for each day during which such violation continues after actual notice of the regulation, rule or order. Such notice may be given by personal service or by posting the same in a conspicuous place on the premises affected thereby. The superior court shall have jurisdiction in equity to enforce any lawful rule, order or regulation of the board, or any



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lawful order of the marshal or rule or order of the head of a fire department, upon application respectively of the marshal or the head of the fire department.

C. M.G.L. c. 148, s.34C: Subsequent violations of the state building code or state fire code

Whoever (1) commits a second or subsequent violation of the state building code or state fire code, including any incorporated specialized codes, or any lawful order of the marshal, the head of the fire department or a state or local building inspector or (2) continues to violate any such code or order after receipt of actual notice of such violation or order, shall be punished by a fine of not more than \$1,000 or by imprisonment for 1 year in the house of correction or by both such fine and imprisonment. Notice may be provided by in-hand service, by posting the same in a conspicuous place on the premises in violation, or by the lawful issuance of a citation pursuant to chapter 148 A. This section shall not apply to such violations which are under appeal pursuant to section 100 of chapter 143, if such appeal was timely filed.



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VI. APPENDIX A – NON-CRIMINAL FIRE CODE VIOLATION NOTICE

MASSACHUSETTS NON-CRIMINAL FIRE CODE VIOLATION NOTICE (Issued pursuant to MGL c.148A and 527 CMR 1.00)						TICKET #			
DATE ISSUED		DEPARTMENT ISSUING NOTICE		ISSUED BY: <input type="checkbox"/> HEAD OF FIRE DEPARTMENT (OR DESIGNEE) <input type="checkbox"/> STATE FIRE MARSHAL (OR DESIGNEE)		FIRE CODE ENFORCEMENT OFFICER (PRINT NAME)		OFFICER I.D. NUMBER	
NAME OF OFFENDER (LAST)				NAME OF OFFENDER (FIRST)		NAME OF OFFENDER (MI)			
ADDRESS				CITY/TOWN		STATE		ZIP CODE	
DATE OF VIOLATION		TIME		LOCATION OF VIOLATION (INCLUDE #, ST., CITY, TOWN)				STATE ZIP CODE	
VIOLATIONS(s): Fire Code, 527 CMR 1.00 (Code of Massachusetts Regulations Only) Check One:									
A.		<input type="checkbox"/> Warnings of violation(s) only							
B.		<input type="checkbox"/> Violation(s) 527 CMR 1.00							
C.		<input type="checkbox"/> No specific conditions to be corrected <input type="checkbox"/> Continuing conditions to be corrected within 24 hours <input type="checkbox"/> Conditions to be corrected within ___ days							
		Description		Assessment		Description of Condition:			
Sec. _____		_____		\$ _____		_____			
Sec. _____		_____		\$ _____		_____			
Sec. _____		_____		\$ _____		_____			
Sec. _____		_____		\$ _____		_____			
Sec. _____		_____		\$ _____		_____			
Report Attached		<input type="checkbox"/> Yes <input type="checkbox"/> No		Total Amount Due:		\$ _____			
<input type="checkbox"/> This is a 2 nd or subsequent offense		Date(s) of prior Offense(s) _____							
OFFICER CERTIFICATION: I certify that I am authorized to issue this Massachusetts Fire Code Violation Notice in accordance with the provisions of M.G.L. c. 148A. I further certify that (check one):									
<input type="checkbox"/> I have delivered a copy of this violation to the offender, or the offender's agent at the time and place of the violation									
Signature of offender or agent of the offender upon receipt: _____ Date: _____									
<input type="checkbox"/> Check here if offender refused delivery (Note: Whoever upon the request of any local or state code enforcement officer refuses to state his/her name and address shall be punished by a fine of not more than \$200.00 (M.G.L. C. 148A))									
<input type="checkbox"/> I have mailed a copy of this violation notice to the offender at the offender's last known address.									
<input type="checkbox"/> I have delivered a copy of this violation at the offender's last known address.									
<input type="checkbox"/> Address of mailing or delivery: _____									
=====									
D.		MAKE PAYMENT OR REQUEST AN APPEAL TO: (PLACE LABEL HERE)				SEE REVERSE SIDE FOR IMPORTANT INSTRUCTIONS			